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October 19, 1998

BY HAND DELIVERY

Magalie R. Salas, Esquire
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: Response to Order to Show Cause
MM Docket No. 98-155
RM-9082; RM-9133

Dear Ms. Salas:

Transmitted herewith on behalf of Chisholm Trail Broadcasting Co., Inc., licensee of Station KXLS(FM), Alva, Oklahoma, is an original and four copies of its Response to Order to Show Cause, filed in the above-referenced proceeding pursuant to the Commission's *Notice of Proposed Rule Making and Orders to Show Cause*, DA 98-1682 (released August 28, 1998).

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Andrew S. Kersting
Counsel for Chisholm Trail
Broadcasting Co., Inc.

Enclosure

cc (w/ encl.): Certificate of Service (by hand & first-class mail)

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-155
Table of Allotments,)	RM-9082
FM Broadcast Stations)	RM-9133
(Alva, Mooreland, Tishomingo, Tuttle,)	
and Woodward, Oklahoma))	
To: Chief, Allocations Branch		

RESPONSE TO ORDER TO SHOW CAUSE

CHISHOLM TRAIL BROADCASTING CO., INC.

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October 19, 1998

TABLE OF CONTENTS

	<u>Page</u>
Summary	ii
I. Introduction	1
II. The Proposal to Change the Community of License of Station KTSH From Tishomingo to Tuttle Should Not Be Adopted Because It Would Deprive Tishomingo of Its Only Local Broadcast Service	2
III. Even Assuming, <i>Arguendo</i> , that Noncommercial Educational Station KAZC Were to Be Constructed and Commence Operations, It Would Not Constitute a Satisfactory Replacement for Station KTSH	7
IV. The Removal of Station KTSH From Tishomingo Does Not Satisfy The “Rare Circumstances” Exception Set Forth in the Commission’s <i>Change of Community MO&O</i>	10
V. Conclusion	12

SUMMARY

As demonstrated herein, the proposal of Ralph Tyler (“Tyler”), licensee of Station KTSH(FM), Tishomingo, Oklahoma, to change the community of license of Station KTSH from Tishomingo to Tuttle, Oklahoma, should not be adopted because it would result in the removal of Tishomingo’s only local broadcast station. Even assuming, *arguendo*, that noncommercial educational Station KAZC, Tishomingo, were to be constructed and commence operation after KTSH’s proposed move to Tuttle, Station KAZC would not constitute a satisfactory replacement service due to its restricted location and limited operating power. Indeed, KAZC would not provide a city-grade signal to any portion of the Tishomingo community, and its proposed 60 dBu contour would cover only 23% of the population currently served by KTSH’s licensed facility.

Furthermore, Tyler has failed to establish that the proposed change in community of license of Station KTSH would satisfy the “rare circumstances” exception contained in the Commission’s *Change of Community MO&O*, or otherwise serve the public interest. If KTSH were to operate at Tuttle, the station would not provide a first or second service to any area, nor would it provide service to an underserved area. Instead, KTSH would merely provide a 27th radio service to Tuttle, a community of only 2,807 people, which currently receives city-grade service from 20 other radio stations, including a nearby Class C1 station which Tyler previously moved into the Oklahoma City market. Therefore, because Tyler’s proposal to move KTSH to Tuttle would deprive the residents of the county seat of Johnston County, Oklahoma, of their only local radio service, and, as demonstrated by the letters from local Tishomingo community leaders, would have a significant negative impact upon the community’s ability to continue to receive local news, weather, and public

affairs programming, the proposal to move KTSH to Tuttle would not serve the public interest and should not be granted.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	
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Amendment of Section 73.202(b),)	MM Docket No. 98-155
Table of Allotments,)	RM-9082
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and Woodward, Oklahoma))	

To: Chief, Allocations Branch

RESPONSE TO ORDER TO SHOW CAUSE

Chisholm Trail Broadcasting Co., Inc. ("Chisholm"), licensee of Station KXLS(FM), Alva, Oklahoma, by counsel, hereby submits its response to the *Notice of Proposed Rule Making and Orders to Show Cause*, DA 98-1682 (released August 28, 1998) ("*NPRM*"), in the above-captioned proceeding. In support of this response, the following is stated:

I. Introduction.

In its *NPRM*, the Commission proposed to amend the FM Table of Allotments by, *inter alia*, (i) deleting Channel 259C3 at Tishomingo, Oklahoma;¹ (ii) allotting Channel 259C3 to Tuttle; (iii) modifying the license of Station KTSH, Tishomingo, to specify Tuttle as its community of license; and (iv) modifying the license of Station KXLS, Channel 259C1, Alva, to operate on Channel 260C1.² The Commission directed Chisholm to show cause why its license for Station KXLS should

¹ Unless otherwise indicated, all communities referenced herein are located in the state of Oklahoma.

² The proposal to change the community of license of Station KTSH from Tishomingo to Tuttle was initiated by a "Petition for Rulemaking and Request for Issuance of Order to Show
(continued...)"

not be modified to specify operation on Channel 260C1 at Alva in lieu of Channel 259C1. *NPRM* at ¶14. For the reasons stated herein, the Commission should not modify the license of KXLS to specify operation on Channel 260C1 because Tyler's proposal to change the community of license of Station KTSH from Tishomingo to Tuttle would result in the removal of Tishomingo's only local broadcast service, and Tyler has failed to demonstrate that his proposal would nevertheless serve the public interest.

II. The Proposal to Change the Community of License of Station KTSH From Tishomingo to Tuttle Should Not Be Adopted Because It Would Deprive Tishomingo of Its Only Local Broadcast Service.

Section 1.420(i) of the Commission's rules permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990). In *Change of Community R&O*, the Commission stated, however, that it would "not allow any broadcaster to take advantage of this new procedure if the effect would be to deprive a community of an existing service representing its only local transmission service." 4 FCC Rcd at 4874. Moreover, in its reconsideration order, the Commission stated:

The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both. . . . *We specifically wish to clarify that replacement of an operating station with a vacant allotment or unconstructed permit, although a factor to be*

²(...continued)

Cause," filed March 21, 1997, by Ralph Tyler ("Tyler"), licensee of Station KTSH, Tishomingo.

considered in favor of the proposal, does not adequately cure the disruption to "existing service" occasioned by removal of an operating station. From the public's perspective, the potential for service at some unspecified future date is a poor substitute for the signal of an operating station that can be accessed today simply turning on a . . . radio set.

Change of Community MO&O, 5 FCC Rcd 7097 (1990) (emphasis added). See also *Llano and Marble Falls, Texas*, 10 FCC Rcd 4913 (Allocations Branch 1995) (the replacement of an operating station with a vacant allotment does not adequately cure the disruption to existing service); *Kaukana and Cleveland, Wisconsin*, 6 FCC Rcd 7142, 7143, n.3 (Allocations Branch 1991) (same).

In this case, Tyler's claim that the removal of Station KTSH from Tishomingo will not deprive the community of its sole broadcast service due to the existence of a construction permit for noncommercial educational Station KAZC, Tishomingo,³ is inconsistent with the express language of *Change in Community R&O and MO&O*, and is not supported by Commission precedent. In *Klamath Falls, Altamont, and Butte Falls, Oregon, and Dorris, California*, 10 FCC Rcd 7583 (Allocations Branch 1995), the only broadcast station at Altamont was currently off-the-air. In reviewing a counterproposal to change the community of license of that station to Butte Falls, the Allocations Branch ("Branch") noted that the requested change in community of license would be less disruptive with the only local broadcast station off the air than it otherwise would be if that station was operating. Nevertheless, after quoting the Commission's language in *Change in Community MO&O* (set forth above), the Branch found that the residents of Altamont were entitled to a reasonable expectation that service would resume at an earlier date by the already-constructed and once-operating station, than by a new station, which must first go through the administrative

³ As noted in the *NPRM* at ¶4, note 3, on October 14, 1997, the Commission granted the construction permit application of South Central Oklahoma Christian Broadcasting, Inc., for Station KAZC, to operate on Channel 202A at Tishomingo.

process of obtaining a construction permit and then undergoing actual construction before it may become operative. 10 FCC Rcd at 7585-86. The Branch ultimately found that there was not a sufficiently compelling public interest justification for the removal of Altamont's only authorized local transmission service. *Id.* at 7586.

Just as in *Altamont*, the residents of Tishomingo are entitled to a "reasonable expectation" that the existing service they currently receive from KTSH will continue. Ron Hayes, President of the Johnston County Chamber of Commerce, explains that Tishomingo is the county seat of Johnston County, Oklahoma, which is located in the heart of Oklahoma's "Lake Country."⁴ Mr. Hayes states that the loss of KTSH would have a negative impact upon Tishomingo's local job market, as well as the availability of local news, weather, sports, and public service information. *Id.* at ¶2. Mr. Hayes also states that the loss of KTSH would "cause consternation and inconvenience to current advertisers and listeners, and we certainly do not want to see this happen to our only viable radio station." *Id.*

Similarly, Terry Hutchins, Mayor of Tishomingo, states that he is "very sorry to learn" that Tyler wishes to move KTSH to Tuttle.⁵ Mr. Hutchins requests that the Commission find "some other solution" that would permit Johnston County and the City of Tishomingo to retain their only local broadcast station. *Id.*

In addition to being Tishomingo's only local broadcast station, Station KTSH is the only contemporary Christian music station in the Tishomingo area. As a result, the station is an important

⁴ See Letter from Ron Hayes to the FCC Secretary, dated October 8, 1998. The letter from Mr. Hayes as well as others from Tishomingo community leaders are contained in Attachment A hereto.

⁵ See Letter from Terry Hutchins to the FCC Secretary, dated October 15, 1998.

resource for local churches. Reverend R. Duane Nance, Pastor of the Abundant Life Cathedral in Tishomingo, states that KTSH provides a “very useful tool” to spread the gospel, and asks that the station not be permitted to leave the Tishomingo community.⁶ Similarly, Penny Crisp, Pastor of the First Baptist Church in Tishomingo, states that KTSH has been a “positive blessing” to the church “throughout Tishomingo, Johnston County, and all the other cities, towns, and counties it reaches, (including Durant, Ada, Ardmore, and others in Texas such as Sherman and Denison).”⁷ Ms. Crisp also states that the First Baptist Church “enjoys and needs” Christian radio in the Tishomingo community, and hopes that the station will remain in the community for a long time. *Id.* As a further example of KTSH’s importance to local church ministry, Joey Lansdale, Pastor of the Community Church in Tishomingo, states that Station KTSH is “[o]ne of the greatest things that ever happened” to Tishomingo.⁸ Reverend Lansdale also states that, as the only radio station in the community, KTSH “has been a great asset to our area,” and that Community Church will “do anything we can to keep this station in Tishomingo.” *Id.* at ¶4.

The above letters from the President of the Johnston County Chamber of Commerce, the Mayor of Tishomingo, and pastors of local churches demonstrate that KTSH not only serves as a vital source of local news, weather, sports, and informational programming, but also has an important function in local church ministry. Tyler has failed to show that moving KTSH from Tishomingo to Tuttle -- merely to provide the community of Tuttle with a first local service -- would justify the removal of this important first service from Tishomingo or otherwise serve the public

⁶ See Letter from Pastor R. Duane Nance, dated October 8, 1998.

⁷ See Letter from Pastor Penny Crisp to Ralph Tyler, dated October 7, 1998.

⁸ See Letter from Pastor Joey Lansdale, at ¶1.

interest. Indeed, Tyler's proposal to remove Tishomingo's sole transmission service merely on the basis of the existence of a construction permit for a new noncommercial educational station in the community "does not adequately cure the disruption to 'existing service'" that would result from the removal of KTSH. *Change in Community MO&O*, 5 FCC Rcd at 7097. The Commission has repeatedly stated that the public interest is not served by removing a community's sole local transmission service merely to provide a first local transmission to another community. *Potts Camp and Saltillo, Mississippi*, 12 FCC Rcd 3712, 3713 (Allocations Branch 1997) (NPRM); *Sibley, Iowa and Brandon, South Dakota*, 11 FCC Rcd 3635 (Allocations Branch 1996) (NPRM); *Llano and Marble Falls, Texas*, 10 FCC Rcd 4913 (Allocations Branch 1995). As demonstrated above, Station KTSH currently provides substantial public interest benefits to the Tishomingo community, and Tyler has offered no countervailing public interest benefit sufficient to warrant the removal of KTSH from that community.⁹

⁹ As Chisholm previously has demonstrated in this proceeding, Tyler's rulemaking petition was defective at the time it was filed because it was violative of the procedural policy adopted by the Policy and Rules Division in *Cut and Shoot, Texas*, 11 FCC Rcd 16383 (Pol. Rul. Div. 1996). *Cut and Shoot* makes clear that processing rulemaking petitions (such as Tyler's) which are dependent upon the actions of third parties to effect compliance with the Commission's rules (in this case, the construction and operation of KAZC) is not "conducive to the efficient transaction of Commission business, and imposes unnecessary burdens on the administrative resources of both the Allocations Branch and the Audio Services Division." *Id.* at 16384, ¶4. Indeed, Tyler's rulemaking petition did not contain a request for a waiver of the prohibition against the removal of a sole local broadcast service, but, rather, was based solely upon the then pending application for Station KAZC. Tyler also has failed to make any showing of how he might be prejudiced if he was required to resubmit his proposal after the activation of a new service at Tishomingo.

III. Even Assuming, *Arguendo*, That Noncommercial Educational Station KAZC Were To Be Constructed and Commence Operations, It Would Not Constitute a Satisfactory Replacement for Station KTSH.

Station KTSH is a licensed facility which has been providing service to Tishomingo for over two years.¹⁰ Tyler currently holds a construction permit ("Permit") to move KTSH's transmitter site and increase the antenna height of the station (File No. BPH-970220IA).¹¹ As demonstrated in the attached Engineering Statement of William H. Nolan (Attachment B hereto), if Tyler were to construct the facilities authorized in the KTSH Permit, the population covered by KTSH's city-grade and 60 dBu contours would increase by 32% and 37%, respectively:

<u>KTSH Licensed Facilities</u>	<u>Population</u>	<u>Area (sq. km)</u>
70 dBu:	9, 796	1,595
60 dBu:	35,854	4,513
<u>KTSH Permit Facilities</u>	<u>Population</u>	<u>Area (sq. km)</u>
70 dBu:	14,449	1,641
60 dBu:	56,949	4,635

Engr. Statement, pp. 5-7.

With respect Station KAZC, the transmitter site and antenna height authorized in the KAZC construction permit (File No. BPED-970127MD) are the same as those of KTSH's licensed facilities.

See Engr. Statement, p. 5.¹² However, even assuming, *arguendo*, that KAZC were to be constructed

¹⁰ See BLH-960820KA.

¹¹ KTSH currently operates with 25 kilowatts at 345 meters above mean sea level. The KTSH Permit authorizes KTSH to operate with the same power at 376 meters above mean sea level.

¹² It is likely that South Central Oklahoma Christian Broadcasting, Inc., permittee of
(continued...)

and commence on-air operations, it would not provide a city-grade signal to any portion of Tishomingo because it will operate with no more than 1.75 kilowatts of power.¹³ *Id.* at 5-6. Station KAZC cannot increase its power or move its transmitter closer to Tishomingo because it would either cause interference and/or become short-spaced to adjacent-channel Station KNTU, Denton, Texas.¹⁴ *Id.* at 5 and Ex. No. 2.

As a result of its limited operating power, KAZC would serve only the following populations and areas:

¹²(...continued)

Station KAZC, has predicated the implementation of its construction permit upon the proposed move of KTSH to Tuttle. In his attached Engineering Statement, Mr. Nolan indicates that, for both KTSH and KAZC to operate from the licensed site of KTSH, it would be necessary for the stations to utilize a combined antenna or extensive notch filtering. Engr. Statement, p. 7. Mr. Nolan states that when locating FM antennas on a supporting structure at approximately the same height, it is standard engineering practice to offset the bays of the antennas. In this case, however, KAZC has proposed to locate its antenna at the same height as KTSH's existing antenna, even though the KTSH tower is 445 meters in height and there is ample space available to locate KAZC's 3-bay antenna at a different height. *Id.* Mr. Nolan further states that in the event KAZC were to commence on-air operations at its authorized site while KTSH were still operating from the same location, it would be necessary for the noncommercial permittee to "invest substantial additional funds," and/or seek to modify its proposed facilities "for even a short-term co-existence with Station KTSH." *Id.*

¹³ Chisholm recognizes that noncommercial educational stations are not required to place a city-grade signal over their respective community of license. Nevertheless, one of the issues concerning the proposed reallocation of Channel 259C3 from Tishomingo to Tuttle is whether it would result in the removal of Tishomingo's sole local broadcast service. The facts concerning Station KAZC's proposed operation are relevant because they demonstrate that, even if the proposed noncommercial station is constructed and becomes operational, it will have a very limited coverage area and will serve only a small portion of those Tishomingo-area residents who currently are served by KTSH.

¹⁴ Station KNTU operates on Channel 201C1 at Denton, Texas.

	<u>Population</u>	<u>Area (sq. km)</u>
70 dBu:	1,486	416
60 dBu:	8,387	1,348

Engr. Statement, p. 6. As reflected above, Station KAZC's city-grade contour would serve only 15% of the population that KTSH currently serves with its licensed city-grade contour. KAZC's 60 dBu contour would serve only 23% of the population served by KTSH's licensed 60 dBu contour. Moreover, if Tyler were to construct the facilities authorized in the KTSH Permit, KAZC's city-grade contour would serve only 10% of the population that would be served by the city-grade contour of KTSH's Permit facilities. KAZC's 60 dBu contour would serve only 15% of the population that would be served by the 60 dBu contour of KTSH's Permit facilities. *Id.*

Similarly, KAZC's city-grade contour would cover only 26% of the area served by KTSH's licensed city-grade contour. KAZC's 60 dBu contour would cover only 30% of the area served by KTSH's licensed 60 dBu contour. KAZC's city-grade contour would cover only 25% of the area served by the city-grade contour of KTSH's Permit facilities. KAZC's 60 dBu contour would cover only 29% of the area served by the 60 dBu contour of KTSH's Permit facilities. *Id.* at 6-7.

The above analysis of the respective populations and areas served by Station KAZC *vis-a-vis* KTSH's licensed and Permit facilities demonstrates that, even if KAZC were to commence operations after KTSH's proposed move to Tuttle, the noncommercial educational station would not constitute a satisfactory replacement service for KTSH due to KAZC's restricted location and limited power. Indeed, in 1991, the Commission made a public interest determination that Channel 259C3 should be substituted for Channel 292A at Tishomingo because the upgrade would provide the Tishomingo community with a wider coverage area FM service. *Tishomingo, Oklahoma*, 6 FCC Rcd

620 (Allocations Branch 1991). Tyler has failed to make any showing in this proceeding that there has been a change of circumstances in Tishomingo such that the community no longer is entitled to the enhanced FM service.

IV. The Removal of Station KTSH From Tishomingo Does Not Satisfy the “Rare Circumstances” Exception Set Forth in the Commission’s *Change of Community MO&O*.

In its *Change of Community MO&O*, the Commission stated:

While we continue to believe that a prohibition on the removal of local service is justified because such changes presumptively disserve the public interest, we also wish to clarify that, in the *rare circumstances where removal of a local service might serve the public interest by, for example, providing a first reception service to a significantly sized population*, we will entertain requests to waive the prohibition.

5 FCC Rcd at 7096, ¶17 (emphasis added).

In this case, Tyler’s proposal fails to satisfy the “rare circumstances” exception set forth in *Change in Community MO&O* because the operation of KTSH at Tuttle would not provide a first reception service to a significantly sized population, nor would it otherwise serve the public interest. It should be made clear that this is not a case in which a petitioner seeks to move a station from one community in order to provide a first local broadcast service to another nearby community, or one where the station’s proposed service contour would overlap, at least in part, with the station’s existing service contour. Tishomingo is located in southern Oklahoma near the Oklahoma/Texas border. Tuttle is located approximately 95 miles to the north/northwest, near Oklahoma City. The Tuttle city limits are contiguous with the Oklahoma City metropolitan area. *See* Engr. Statement, p. 3. The community of Tuttle presently is served by a total of 26 radio stations, 20 of which provide

a city-grade signal to Tuttle.¹⁵ If KTSH were to move to Tuttle, the station would not provide a first or second service to any area, nor would it provide service to an underserved area (*i.e.*, an area receiving less than five aural services). *Id.* at 3.

Tishomingo, on the other hand, presently receives service from only 11 radio stations, three of which are licensed to communities in Texas. *Id.* at 4 and Table No. 2. KTSH is the only station that provides city-grade service to the Tishomingo community. *Id.* at 4.

As demonstrated above, the proposed move of KTSH to Tuttle would result in a substantial loss to the Tishomingo community. Because the proposed operation KTSH at Tuttle would not result in the provision of service to an underserved area, but, rather, would result in merely providing an additional radio service to a community that already is substantially well-served by 26 other radio stations, Tyler's proposal to move KTSH would not serve the public interest, and, thus, does not satisfy the "rare circumstances" exception to the general prohibition against the removal of a sole local broadcast service.¹⁶

Furthermore, this proceeding is not the first time Tyler has sought to move an existing station from a larger community to a smaller community near Oklahoma City. Indeed, in *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (Allocations Branch 1996), Tyler was successful in moving Station KKNB (formerly KTLN), Channel 227C1, from Ada to Newcastle, which is

¹⁵ Engr. Statement, p. 3 and Table No. 1. Fifteen of the 20 stations which provide city-grade service to Tuttle are licensed to Oklahoma City. *Id.* at 3.

¹⁶ Chisholm notes that even if the Commission were to find that the proposed move of KTSH to Tuttle would serve the public interest, Chisholm could not move to Channel 260C1 at Alva unless and until Station KIXR(FM), Ponca City, Oklahoma, which currently is operating on Channel 261A, moves to Channel 284A in accordance with the Commission's *Report and Order* in MM Docket No. 96-80. *See Alva, Bartlesville, and Ponca City, Oklahoma, et al.*, 11 FCC Rcd 20915 (Allocations Branch 1996).

approximately 15 miles east of Tuttle.¹⁷ As reflected in Table No. 1 to the attached Engineering Statement, Tyler's Station KKNB already provides the community of Tuttle with city-grade service. Tyler's instant proposal to have Station KTSH also become an Oklahoma City station under the guise of providing a first local service to Tuttle should not be granted, particularly where, as here, it would result in a substantial loss to the Tishomingo community.

V. Conclusion.

As demonstrated herein, if KTSH were permitted to move from Tishomingo to Tuttle, the change in community of license would result in the removal of Tishomingo's only local broadcast service. Tyler has failed to establish that the proposed change in community of license would meet the "rare circumstances" exception set forth in *Change of Community MO&O* or otherwise serve the public interest.¹⁸ Even assuming, *arguendo*, that KAZC were to commence operations after KTSH's proposed move, KAZC would not in any way constitute a satisfactory replacement service because, due to its restricted location and limited power, the proposed noncommercial station would not provide a city-grade signal to *any portion* of the Tishomingo community. Moreover, KAZC's proposed 60 dBu contour would cover only 23% of the population currently served by KTSH's licensed 60 dBu contour, and only 15% of the population that would be served by KTSH if it were to operate with the facilities authorized in its existing Permit.

The substantial loss of service that would be incurred by the Tishomingo community if KTSH were to move to Tuttle does not serve the public interest. Indeed, if KTSH were to operate

¹⁷ Ada has a 1990 Census population of 15,820; Newcastle has a population 4,214. In this case, Tishomingo has a population of 3,116, while Tuttle has a population of only 2,807.

¹⁸ See 5 FCC Rcd at 7096, ¶17.

at Tuttle, the station would not provide a first or second service to any area, nor would it provide service to an underserved area. Instead, KTSH would merely provide a 27th radio service to Tuttle, a community of only 2,807 people. Tuttle currently receives city-grade service from 20 other stations, including a nearby Class C1 station which Tyler previously moved into the Oklahoma City market. Therefore, because Tyler's proposal to change the community of license of KTSH would deprive the residents of the county seat of Johnston County, Oklahoma, of their only local radio service, and, as demonstrated by the letters from local community leaders, would have a significant negative impact upon the community's ability to continue to receive local news, weather, and public affairs programming, the proposal to move KTSH to Tuttle would not serve the public interest and should not be granted.

WHEREFORE, in light of the foregoing, Chisholm Trail Broadcasting Co., Inc. respectfully requests that the proposal to (i) delete Channel 259C3 at Tishomingo, Oklahoma, (ii) allot Channel 259C3 to Tuttle, Oklahoma, (iii) modify the license for Station KTSH, Tishomingo, to specify Tuttle as its community of license, and (iv) modify the license of Station KXLS, Channel 259C1, Alva, Oklahoma, to operate on Channel 260C1, be DENIED.

Respectfully submitted,

CHISHOLM TRAIL BROADCASTING CO., INC.

By:

A handwritten signature in dark ink, appearing to read "Andrew S. Kersting", is written over a horizontal line.

Kathleen Victory
Andrew S. Kersting

Its Counsel

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October 19, 1998

c:\ask...\pleading\tishmngo.res

Attachment A

Letters From Tishomingo Community Leaders

JOHNSTON COUNTY CHAMBER OF COMMERCE
101 South Capitol
Tishomingo, OK 73460
Johnston County is the Heart of Lake County



October 8, 1998

Mr. William T. Canton, Secretary
Federal Communication Commission
1919 M Street, NW, Room 222
Washington, D. C. 20554

Dear Secretary Canton:

This letter is being written to express our urgent appeal to you to consider closely a proposal that may shortly be arriving, or may now be on your desk. This deals with the application by Mr. Ralph Tyler, owner of Radio Station KTSH to move his Radio Station KTSH to Tuttle, OK.


Tishomingo is the county seat of Johnston County, OK, located in the heart of what is known as "Lake Country," the area including the well-known Lake Texoma. We are currently served by Radio Station KTSH, which is our only commercial radio station. As you no doubt can understand, this would cause consternation and inconvenience to current advertisers and listeners, and we certainly do not want to see this happen to our only viable radio station. If this were to occur, local job markets, news, weather, sports and public service information would be lost to Tishomingo.

While we wish no ill will to our sister city of Tuttle, we certainly do not want to see our free enterprise system push our service to some lesser position, while letting an already-saturated Oklahoma City market become even larger.

We strongly oppose the approval of the application made by Radio Station KTSH which would certainly affect the well-being and convenience of a very strong market in this area.

Thanks for your time and consideration.

Yours very truly,


Ron Hayes
President



CITY OF TISHOMINGO



OCTOBER 15, 1998


Mr. William T. Caton, Secretary
Federal Communication Commission
1919 M Street, NW Room 222
Washington, D.C.

Dear Mr. Caton:

As Mayor of the City of Tishomingo, I am very sorry to learn that Mr. Ralph Tyler desires to move his FM Radio Station to the City of Tuttle. The removal of this station will leave Johnston County and the City of Tishomingo without a local radio station. Without a local Radio Station to broadcast news releases, public information notices and urgent news releases, the City of Tishomingo will be forced to rely on Radio Stations and other news agencies that are located outside of Johnston County to distribute this information.

Again, I regret that Mr. Tyler feels the necessity to move his radio station, and would hope that there is some other solution to his situation, whatever that may be, that would allow Johnston County and the City of Tishomingo to retain a local broadcast station.

Sincerely yours,


Terry Hutchins
Mayor of Tishomingo

ABUNDANT LIFE CATHEDRAL

P.O. Box 751, Tahomíngo, OK 73460 580-371-0129

PASTOR R. DUANE NANCE

October 8, 1998

To Whom It May Concern:

Being a Pastor in Johnston County, I appreciate any and all avenues to spread the gospel. The radio broadcast is one very useful tool in doing so. I would ask that you keep the "airwaves" alive with the gospel here in Johnston County.

Bless you and thank you.

Rev. R. Duane Nance

Jesus

FIRST BAPTIST CHURCH

"When Jesus is First, Every Second Counts"

10-7-98

Ralph Tyler
Owner of KTSH Radio
Tishomingo, OK

Dear Mr. Tyler,

Your radio station, KTSH in Tishomingo, has been such a positive blessing to me, our church family, and the Body of Christ throughout Tishomingo, Johnston County, and all the other cities, towns, and counties it reaches (including Durant, Ada, Ardmore, and others in Texas such as Sherman and Denison).

I have received word of a possible move of this quality radio program to another location. Whether true or not, I want you to know that we enjoy and need good Christian radio here and hope you will continue to remain here for a long time. May God bless you.

Sincerely,
Perry Crisp
Pastor

COMMUNITY CHURCH

Pastor Joey Lansdale

114 WEST MAIN
TISHOMINGO, OK 73460
580-371-2014
FAX 580-371-3953

To Whom It May Concern,

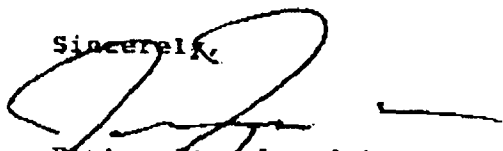
One of the greatest things that ever happened to our Community was KTSH.

Tishomingo is a small community of about 3000 people. Because we are in an economically depressed area, and are also isolated from major metropolitan areas, our teenagers have very little to listen to in the way of positive music. KTSH was for me and our Community a positive alternative to much of the entertainment that is having a negative impact on our kids.

I can speak for my 12 year old daughter who every time she got into my pick-up on the way to school in the morning, and every time she came home from school in the evening listened to KTSH. She loves this station. Because of the radio station, we were able last year to bring a major entertainer to Tishomingo, Jaci Velasquez. Without this radio station, the people here would have known little about her. Not only were they able to listen to her music, but also we were able to advertise which enabled us to have the first concert of this type in our area.

We want to do anything we can to keep this station in Tishomingo. It is our only station and has been a great asset to our area.

Sincerely,



Pastor Joey Lansdale
Community Church, Tishomingo

Attachment B

Engineering Statement of William H. Nolan

Nolan Broadcast Services

Re-Assign Channel 259C3

Tishomingo, Oklahoma/Tuttle, Oklahoma

Prepared for:

Chisholm Trail Broadcasting Company

October, 1998


Nolan Broadcast Services

Certification of Engineer

I, William H. Nolan, with offices at 1664 Melrose Lane, Wichita, KS, have been retained for the purpose of preparing the technical data forming this report.

My work is a matter of record before the Federal Communications Commission. I have filed numerous applications that have been subsequently granted by the Commission. I have spent 18 years in the broadcast industry, and have designed and constructed numerous radio stations in that time, including AM and FM facilities.

I declare under penalty of perjury that the contents of this report are true and accurate to the best of my knowledge and belief.

Signed: 

Date: 10/9/98

William H. Nolan
Broadcast Technical Consultant
(316) 655-0655

Nolan Broadcast Services

Engineering Statement

I, William H. Nolan, have been retained by Chisholm Trail Broadcasting Co. to evaluate the impact of the relocation of Channel 259 C3, currently assigned to the community of Tishomingo, Oklahoma.

Exhibit Background

Ralph Tyler, licensee of radio station KTSH, has proposed the relocation of channel 259 C3 to the community of Tuttle, Oklahoma. Tuttle and Tishomingo are separated by a distance of 153.59 kilometers or 95.43 miles. This proposed amendment to the FM Table of Allotments would remove the only commercial channel assignment to the community of Tishomingo. Tyler has stated that this relocation would have no negative impact on the community of Tishomingo, since the community would still retain one radio license. At this time, no other radio license exists in the community of Tishomingo.

Tuttle, Oklahoma

There is currently no allotment assigned to the community of Tuttle. However, Tuttle enjoys outstanding radio service, because of its close proximity to Oklahoma City. Tuttle is only 27 minutes driving distance from the heart of Oklahoma City, and has in fact become part of this metropolitan area. Tuttle's city boundaries are contiguous with the metropolitan area of Oklahoma City.

Tuttle enjoys service from 26 radio stations. 20 of these stations provide city grade service to the community of Tuttle. 15 of these stations which place a city grade signal over Tuttle are licensed to Oklahoma City, further substantiating Tuttle's inclusion in the metropolitan area. If KTSH were to move to Tuttle, it would not provide a first or second service to any area, nor would it provide service to an underserved (i.e., area receiving less than 5 aural services) area. (See Table No. 1)

Table No. 1

CallSign	Service	City	Channel	Contour
KATT	FM	Okla. City	263C	3.16 mV
KCSC	FM	Edmond	211C1	3.16 mV
KJYO	FM	Okla. City	274C	3.16 mV
KKNG	FM	Newcastle	227C1	3.16 mV
KMGL	FM	Okla. City	281C	3.16 mV
KMSI	FM	Moore	201C2	3.16 mV
KNTL	FM	Bethany	285A	1.00 mV

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KOKF	FM	Edmond	215C1	1.00 mV
KOMA	FM	Okla. City	223C	3.16 mV
KQSR	FM	Okla. City	234C	3.16 mV
KRXO	FM	Okla. City	299C	3.16 mV
KTST	FM	Okla. City	270C	3.16 mV
KXXY	FM	Okla. City	241C	3.16 mV
KYIS	FM	Okla. City	255C	3.16 mV
KEBC	AM	Okla. City	1340	5.00 mV
KJON	AM	Anadarko	850	2.00 mV
KNOR	AM	Norman	1400	2.00 mV
KOMA	AM	Okla. City	1520	5.00 mV
KQCV	AM	Okla. City	800	5.00 mV
KTLV	AM	Midwest City	1220	5.00 mV
KTOK	AM	Okla. City	1000	5.00 mV
KVSP	AM	Okla. City	1140	5.00 mV
KWCO	AM	Chickasha	1560	2.00 mV
KZUE	AM	El Reno	1460	2.00 mV
WKY	AM	Okla. City	930	5.00 mV
WWLS	AM	Moore	640	5.00 mV

Tishomingo, Oklahoma

Tishomingo, Oklahoma currently has two FM channel allotments. The first channel is 259 C3, licensed to radio station KTSH.¹ The second channel is 202 A, on which a construction permit was granted to radio station KAZC.² This construction permit has not been fulfilled, and no license granted.

Although Tishomingo has been assigned 2 channel allotments, radio service to the community is sparse. Tishomingo is covered by radio service from 11 radio stations. Only KTSH provides a city grade signal to the community. Tishomingo falls in the outer edges of the 1.00 mV (FM) and 2.00 mV (AM) contours for all other stations. No Oklahoma City stations serve the Tishomingo area. (See Table No. 2)

Table No. 2

CallSign	Service	City	Channel	Contour
KDGE	FM	Gainsville, TX	233C	1.00 mV
KKAJ	FM	Ardmore	239C1	1.00 mV
KLAK	FM	Durant	248C2	1.00 mV

¹ File No. BLH960820KA

² File No. BPED970127MD

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KMAD	FM	Madill	272A	1.00mV
KTSH	FM	Tishomingo	259C3	3.16 mV
KAAM	AM	Plano, TX	620	2.00 mV
KEOR	AM	Atoka	1110	2.00 mV
KKLF	AM	Denison, TX	950	2.00 mV
KMAD	AM	Madill	1550	2.00 mV
KSEO	AM	Durant	750	2.00 mV
KVSO	AM	Ardmore	1240	2.00 mV

KTSH Background

Radio station KTSH was licensed on August 20, 1996. Tyler currently holds a construction permit to change the tower location and antenna height of station KTSH.³ This construction permit expires February 26, 1999. Completion of this construction permit would dramatically increase the population served by station KTSH, and retain Tishomingo as the city of license. (See Exhibit No. 1) Station KTSH is the only FM service that serves the community of Tishomingo with a city grade signal. KTSH broadcasts with an effective radiated power of 25 kilowatts.

KAZC Background

Proposed station KAZC holds a construction permit that expires on April 14, 1999. The proposed tower location and antenna height are identical to that of licensed station KTSH. However, KAZC will not serve the community of Tishomingo with city grade service because its effective radiated power is only 1.75 kilowatts. Station KAZC cannot be located any closer to Tishomingo because of a potential short spacing with adjacent channel 201 C1 licensed to KNTU in Denton, Texas. (See Exhibit No. 2)

Population

Licensed station KTSH currently serves the entire community of Tishomingo with city grade service. The population served by the city grade contour (70 dbu) of licensed station KTSH is 9,796 persons.⁴ The population served by its 60 dbu contour is 35,854 persons.⁴ (See Exhibit No. 3)

If the construction permit were to be completed for KTSH, the population served by the city grade contour (70 dbu) would grow to 14,449 persons.⁴ The population served by its 60 dbu contour or would grow to 56,949 persons.⁴ (See Exhibit No. 1)

³ File No. BPH970220IA

⁴ Source: 1990 U.S. Census Data

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Proposed station KAZC will not serve any portion of the Tishomingo community with city grade service. The population served by the 3.16 mV city grade contour (70 dbu) of proposed station KAZC is only 1,486 persons.⁵ The population served by its 1.00 mV (60 dbu) contour is 8,387 persons.⁵ (See Exhibit No. 4)

Areas of Service

Licensed station KTSH currently serves an area of 1,595 square kilometers with its 3.16 mV city grade contour. Proposed station KAZC would serve an area of 416 square kilometers with its 3.16 mV city grade contour. (See Exhibit No. 5)

Licensed station KTSH currently serves an area of 4,513 square kilometers with its 1.00 mV (60 dbu) contour. Proposed station KAZC would serve an area of 1,348 square kilometers with its 1.00 mV (60 dbu) contour. (See Exhibit No. 6)

If the construction permit were to be completed for KTSH, the area served by the 3.16 mV city grade contour (70 dbu) would grow to 1,641 square kilometers. The area served by its 1.00 mV (60 dbu) contour would grow to 4,635 square kilometers. (See Exhibit No. 1)

Conclusion

The removal of station KTSH from the community of Tishomingo would be a substantial loss for the area. Proposed station KAZC would not serve any of the community of Tishomingo with city grade service. The community of Tishomingo would be left with no AM or FM services that provide a city grade signal. Furthermore, if KAZC were a commercial channel, it would not be possible to license the station to Tishomingo under current Commission Rules and Regulations, since the community is not served with a city grade signal.

Proposed station KAZC would only serve 15 percent of the population currently served by licensed station KTSH within its city grade contour. Proposed station KAZC would only serve 23 percent of the population currently served by licensed station KTSH within its 60 dbu contour. KAZC would only serve 10 percent of KTSH's construction permit 70 dbu contour, and 15 percent of its 60 dbu contour.

⁵ Source: 1990 U.S. Census Data

Nolan Broadcast Services

Proposed station KAZC would only serve 26 percent of the area currently served by licensed station KTSH within its city grade contour. Proposed station KAZC would only serve 30 percent of the area currently served by licensed station KTSH within its 60 dbu contour.

The community of Tuttle is abundantly served by the radio media. The community itself has become a part of the metropolitan Oklahoma City area, and the allocation of channel 259C3 to this community will have little effect on the listening habits of its residents.

The community of Tishomingo and its surrounding area would be far better served by the completion of the KTSH construction permit currently on file with the Commission. The population served within the city grade contour of KTSH would increase by 32 percent. The population served within the 60 dbu contour of KTSH would increase by 37 percent.

It is apparent that the proponents of proposed station KAZC have predicated the completion of their construction permit on the move of station KTSH. For both stations to exist at this site, a combined antenna, or extensive notch filtering in both antenna systems will be necessary. It is standard engineering practice to offset the bays of FM antennas when locating them on a supporting structure at the same approximate height, yet both stations are on file at an identical height above average terrain. This supporting structure is 445 meters in height, with ample available space for a 3-bay FM antenna, yet an identical location of 77 meters for the center of radiation was chosen.

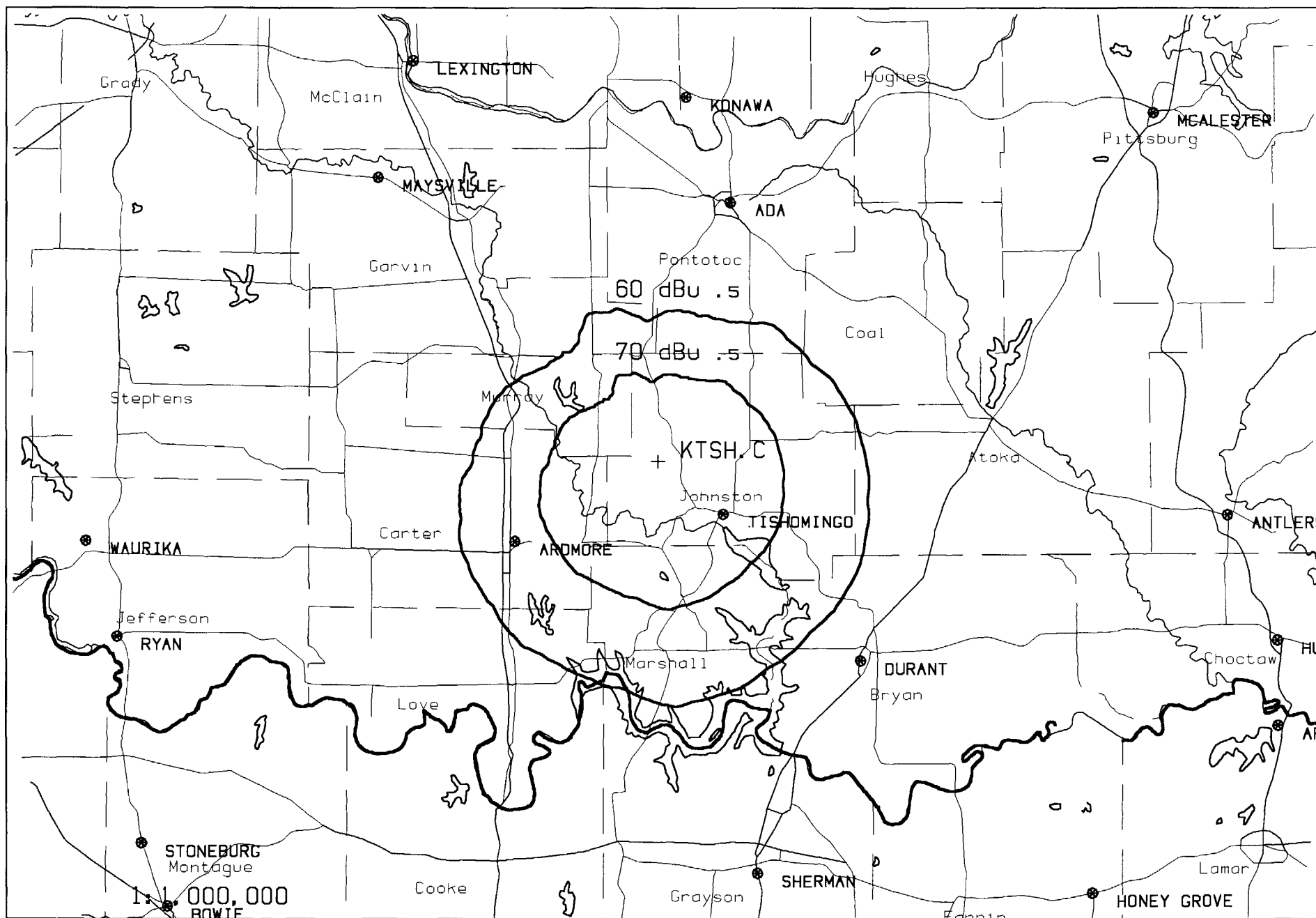
In order to provide continuing service to the community of Tishomingo, it will be necessary for the proponents of KAZC to invest substantial additional funds, or file an antenna height modification, or both, for even a short-term coexistence with station KTSH.

Respectfully Submitted,

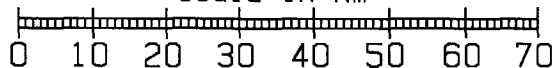


William H. Nolan

Broadcast Technical Consultant



Scale in km



KTSH.C 259C3 25kW 376M AMSL
N. Lat. 34 19 46 W. Lng. 96 49 02

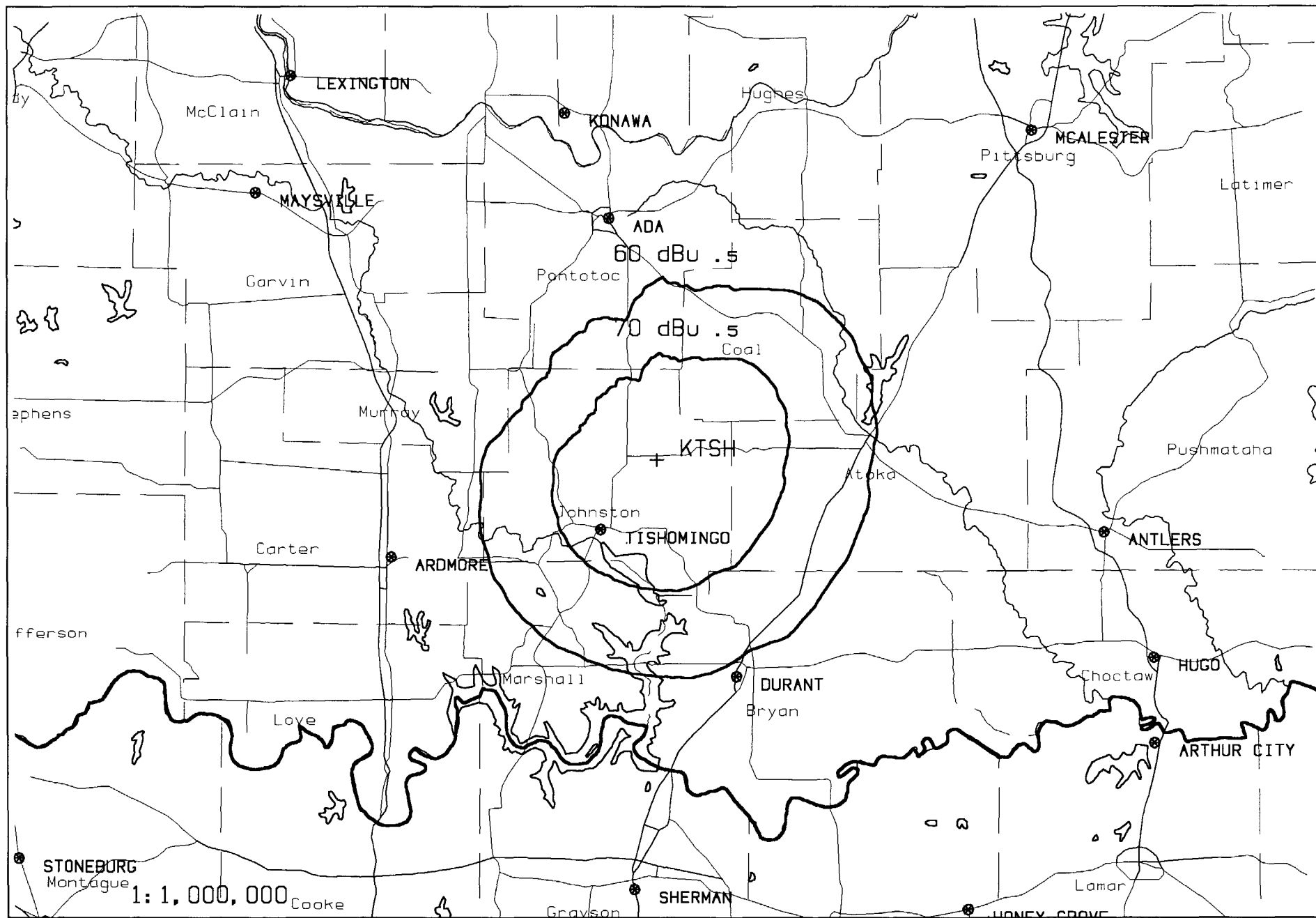
Exhibit #1.
Bill Nolan - 10/98

Bill Nolan
Nolan Broadcast Services

Exhibit #2

REFERENCE	CLASS = A	DISPLAY DATES
34 21 34 N		DATA 10-07-98
96 33 34 W	Current Spacings	SEARCH 10-08-98
----- Channel 202 - 88.3 MHz -----		

Call	Channel	Location	Dist	Azi	FCC	Margin
N. Lat.	W. Lng.	Power	HAAT			
KAZC.C CP	202A	Tishomingo	OK	0.00	0.0	115.0 -115.00
34 21 34	96 33 34	CN	1.750 kW	100 M		
		South Central Oklahoma Christ	BPED970127MD	971209		
AP204 AP	204C2	Ada	OK	46.23	356.8	55.0 -8.77
34 46 32	96 35 15	CN	31.000 kW	73 M		
		American Family Association	BPED960404MB	971223		
		Amended 961203				
KNTU LI	201C1	Denton	TX	130.09	204.3	133.0 -2.91
33 17 24	97 08 11	DCN	100.000 kW	135 M		
		University of North Texas	BMLED920107KG	970410		
KNTU LI	201C1	Denton	TX	130.09	204.3	133.0 -2.91
33 17 24	97 08 11	DCN	100.000 kW	111 M		
		University of North Texas	BMLED920205KC	970410		
		*** This license is for an AUXILIARY facility of KNTU, Denton, Texas. ***				
AP204 AP	204C3	Ardmore	OK	57.38	252.5	42.0 15.38
34 12 10	97 09 12	EN	25.000 kW	65 M		
		Cameron University	BPED960118MJ	960529		
KMSI LI	201C2	Moore	OK	132.68	315.2	106.0 26.68
35 12 07	97 35 18	VN	30.000 kW	182 M		
		Creative Educational Media.,	BLED921104KA	930429		
		Vertical Polarization Only				
KEOM LI	203C1	Mesquite	TX	177.26	182.3	133.0 44.26
32 45 45	96 38 04	DCN	61.000 kW	175 M		
		Mesquite Independent School D	BLED920113KB	970715		
KETR LI	205C1	Commerce	TX	137.59	154.6	75.0 62.59
33 14 17	95 55 27	CN	100.000 kW	116 M		
		Texas A & M University-Commer	BLED830608AD	970501		
AP203 AP	203C1	Crescent	OK	207.40	330.9	133.0 74.40
35 59 07	97 41 00	DCN	60.000 kW	94 M		
		Pensacola Christian College,	BPED970313ML	970513		



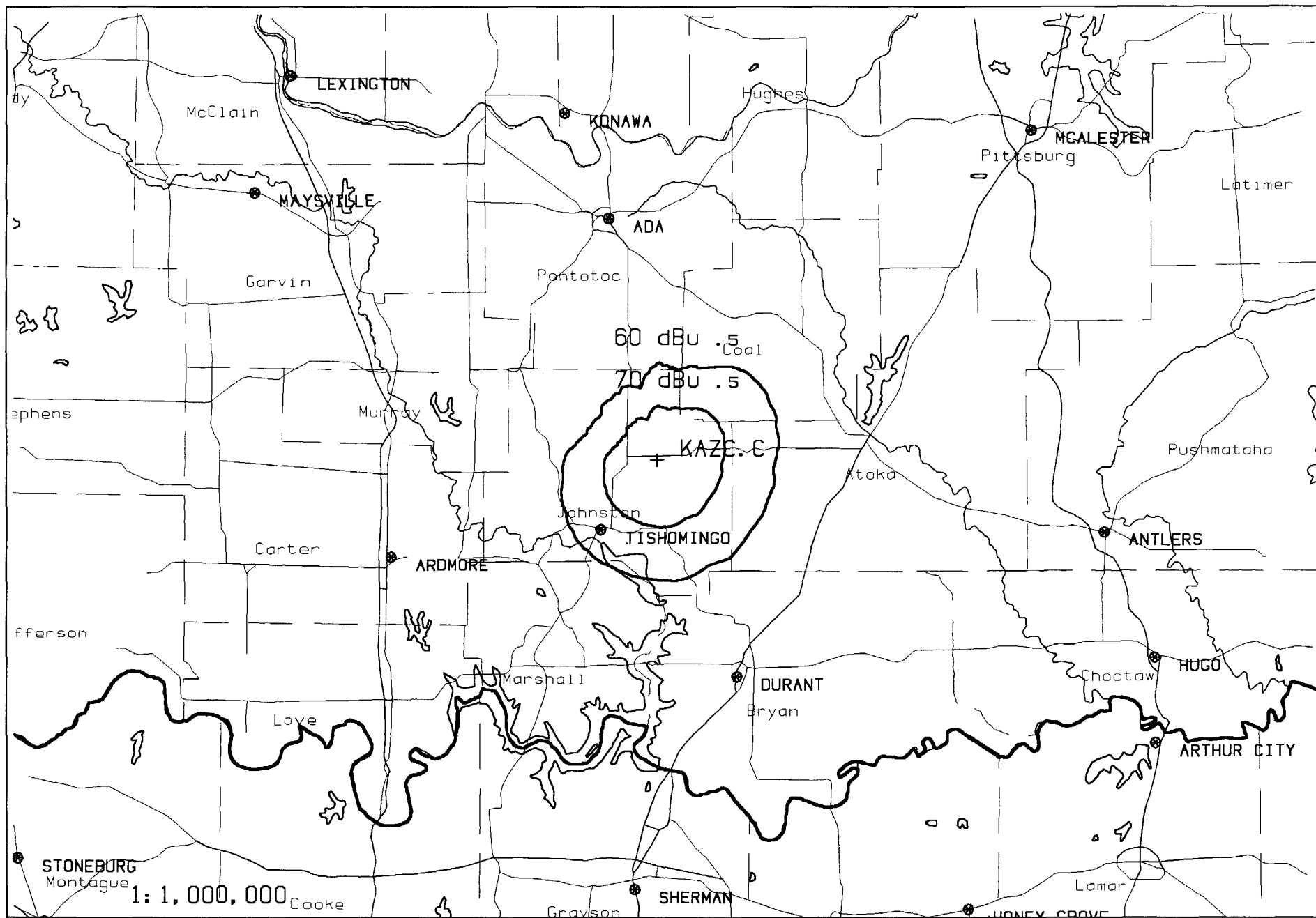
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Scale in km

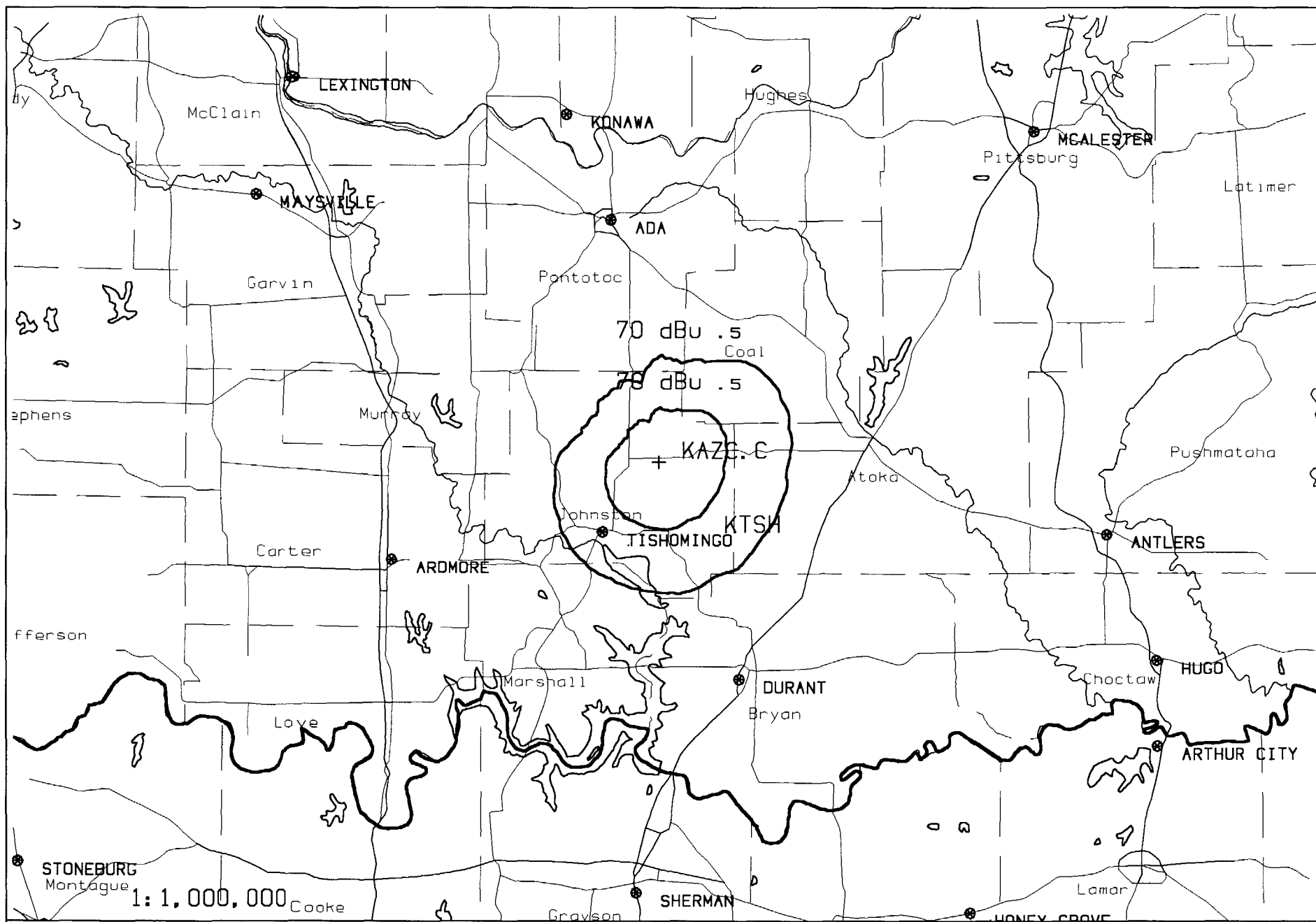


KTSH 259C3 25kW 345M AMSL
N. Lat. 34 21 34 W. Lng. 96 33 34

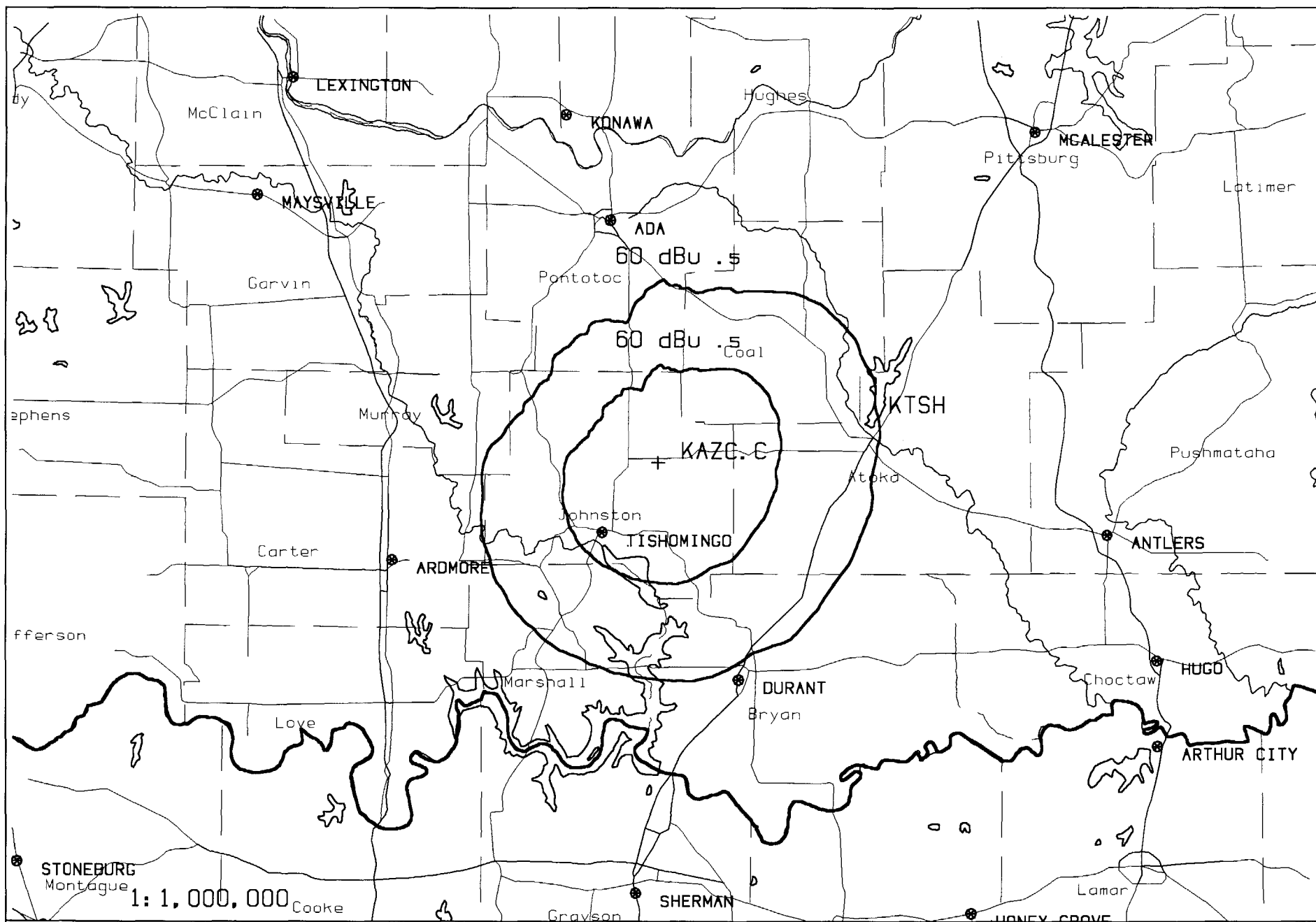
Exhibit #3.
Bill Nolan - 10/98



<p>Scale in km</p> <p>0 10 20 30 40 50 60 70</p>	<p>KAZC.C 202A 1.75kW 345M AMSL</p> <p>N. Lat. 34 21 34 W. Lng. 96 33 34</p>	<p>Exhibit #4.</p> <p>Bill Nolan - 10/98</p>
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<p>Scale in km</p> <p>0 10 20 30 40 50 60 70</p>	<p>KTSH and KATZ 70 dbu Contours</p> <p>N. Lat. 34 21 34 W. Lng. 96 33 34</p>	<p>Exhibit #5.</p> <p>Bill Nolan - 10/98</p>
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<p>Scale in km</p> <p>0 10 20 30 40 50 60 70</p>	<p>KTSH and KAZC 60 dbu Contours</p> <p>N. Lat. 34 21 34 W. Lng. 96 33 34</p>	<p>Exhibit #6.</p> <p>Bill Nolan - 10/98</p>
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CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 19th day of October, 1998, copies of the foregoing "Response to Order to Show Cause" were hand delivered or mailed first-class, postage pre-paid, to the following:

John A. Karousos, Chief*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 565
Washington, DC 20554

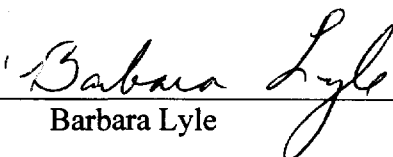
Ms. Leslie K. Shapiro*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 565
Washington, DC 20554

Gary S. Smithwick, Esquire
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Counsel for Classic Communications, Inc.

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Fisher, Wayland, Cooper, Leader
& Zaragoza, L.L.P.
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Washington, DC 20006-1851
Counsel for FM 92 Broadcasters, Inc.

* Hand Delivered


Barbara Lyle